IN THE

Supreme Court of the United States.

OCTOBER TERM, 1895.

No. 685.

ARTHUR S. CHURCHILL, *Attorney General;* JOEL A. PIPER, *Secretary of State;* EUGENE MOORE, *Auditor of Public Accounts;* JOSEPH S. BARTLEY, *State Treasurer,* and HENRY C. RUSSELL, *Commissioner of Public Lands and Buildings, Officers of the State of Nebraska, Composing the State Board of Transportation,* and WILLIAM A. DILWORTH, J. M. KOUNTZ, and J. W. JOHNSON, *Secretaries of said Board, Appellants,*

vs.

OLIVER AMES, OAKES AMES, FRANK M. AMES, WILLIAM POWELL MASON, E. PIERSON BEEBE, CHARLES J. MERRILL, CHARLES F. CHOATE, UNION PACIFIC RAILWAY COMPANY, THE ST. JOSEPH AND GRAND ISLAND RAILROAD COMPANY, THE OMAHA AND REPUBLICAN VALLEY RAILROAD COMPANY, and THE KANSAS CITY AND OMAHA RAILROAD COMPANY, *Appellees.*

The appellants, Arthur S. Churchill, attorney general; Joel A. Piper, secretary of state; Eugene Moore, auditor of public accounts; Joseph S. Bartley, state treasurer, and Henry C. Russell, commissioner of public lands and buildings, officers of the State of Nebraska, composing the State

board of transportation, and William A. Dilworth, J. M. Kountz, and J. W. Johnson, secretaries of said board, move the Court to advance this cause and set the same down for argument at as early a date as may be convenient to the Court.

In support of the motion to advance, the appellants respectfully represent that the legislature of the State of Nebraska passed a law, which was approved April 12, A. D. 1893, and frequently designated in the record as house roll No. 33, the material parts of which are as follows:

"AN ACT to regulate railroads, to classify freights, to fix reasonable maximum rates to be charged for the transportation of freights upon each of the railroads in the State of Nebraska, and to provide penalties for the violation of this act.

"*Be it enacted by the Legislature of the State of Nebraska:*

"SEC. 1. The provisions of this act shall apply, except as in this act otherwise provided, to all railroad corporations and railroad companies, and to any common carrier or carriers engaged in this State in the transportation of freight by railroad therein, and shall also be held to apply to shipments of property made from any point within the State to any other point within the State. The term 'railroad,' as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation, receiver, trustee, or other person operating a railroad, whether owned or operated under contract, agreement, lease, or otherwise, and the term 'transportation' shall include all instrumentalities of shipment or carriage, and the term 'railroad corporation,' contained in this act shall be deemed and taken to mean all corporations, companies, or individuals now owning or operating, or which may hereafter own or operate any railroad, in whole or in part, in this State, and the provisions of this act, except as in this act otherwise provided, shall apply to all persons, firms, and companies, and to all associations of persons, whether incorporated or otherwise, that shall do business as common carriers of freight upon any of the lines of railway in this State, the same as to railroad corporations herein mentioned.

"SEC. 2. That all freight or property to be transported by

any railroad company or companies mentioned in the preceding section, from any point in the State of Nebraska to any other point in said State, shall be classified as hereinafter in this section provided, and any other or different classification of freight, which would raise the rates on class or commodity of freights above the rates prescribed in this act, except as hereinafter otherwise provided, is prohibited and declared to be unlawful. The classification established by this act shall be known as the 'Nebraska classification.' Freights shall be billed at the actual weight, unless otherwise directed in the classification. Twenty thousand pounds shall be a car-load and all excessive weights shall be at the same rate per hundred pounds, except in car-loads of light and bulky articles, and unless otherwise specified in this classification. When the classification makes an article 'released' or 'owner's risk' the same at carrier's risk will be the next rate higher, unless otherwise provided in the classification. Articles rated first class, 'released' or 'owner's risk,' if taken at 'carrier's risk,' will be one and one-half times first class, unless otherwise provided in the classification. All articles carried according to this classification at 'owner's risk' of fire, leakage, damage, or breakage, must be so receipted for by agents, of the railroad, and so considered by owners and shippers. Signing a release contract by a shipper shall not release the railroad company for loss or damages caused by carelessness or negligence of its employés."

The Nebraska Classification. Explanation of Characters.

"The class is given opposite each article. 1, 2, 3, 4, and 5 stand for first, second, third, fourth, and fifth classes respectively; 1½ for one and one-half first class; D. 1 for double first class; 2½ for two and one-half times first class; 3 t. 1 for three times first class; 4 t. 1 for four times first class; O. R. for owner's risk; C. R. for carrier's risk; S. U. for set up; K. D. for knocked down; C. L. for car-load; L. C. L. for less than car-load; P. P. for prepaid; N. O. S. for not otherwise specified in this classification. Classes A, B, C, D, and E refer to table of rates.

"The figures or letter in the first column to the right of the various articles in the classification refer to less than

car-load lots, and those in the second column refer to the rate in car-load lots."

(Then follows detailed list of articles under each classification in car-loads and less than car-loads.)

"SEC. 3. That each of the railroads in the State of Nebraska shall charge, for the transportation of freight from any point in said State to any other point in said State, no higher or greater rate of charge, than is by this act fixed as the reasonable maximum rate for the distance hauled, and the reasonable maximum rates for the transportation of freight by railroad from any point in the State of Nebraska to any other point in said State, are declared and established to be as hereinafter in this section fixed for the distance named and any higher or greater rate for the distance hauled than that herein fixed and established, is prohibited and declared to be unlawful; and the reasonable maximum rate herein fixed and established shall be known as the Nebraska schedule of reasonable maximum rates."

(Then follows a tabulated statement of classification and maximum rates.)

"SEC. 4. All railroads or parts thereof which have been built in this State since the 1st day of January, 1889, or may be built before the 31st day of December, 1899, shall be exempt from the provisions of this act until the 31st day of December, 1899.

"SEC. 5. Whenever any railroad company or companies in this State shall, in a proper action show by competent testimony that the schedule of rates prescribed by this act are unjust and unreasonable such railroad or railroads shall be exempt therefrom as hereinafter provided. All such actions shall be brought before the supreme court, in the name of the railroad company or companies bringing the same, and against the State of Nebraska, and upon the hearing thereof, if the court shall become satisfied that the rates herein prescribed are unjust in so far as they relate to the railroad bringing the action, may issue their order directing the board of transportation to permit such railroad to raise its rates to any sum in the discretion of the board; *Provided*, That in no case shall the rates so raised be fixed

at a higher sum than that charged by such railroad on the 1st day of January, 1893. Whenever any railroad company in this State shall claim the benefit of the provisions of this section, it shall be the duty of such railroad company to show to the court all matters pertaining to the management thereof, and if it shall appear that said railroad company is operating branch lines of railroad in connection with its main line, and all included in one system, then, in that case, it shall be the duty of the railroad company to show to the court upon which branch or branches, or upon which portion of such system the schedule of rates prescribed in this act is unjust and unreasonable, and only such portions shall be exempted from the provisions thereof; *Provided*, That in no case shall a railroad company be allowed to pool the earnings of all the lines operated under one management, where more than one line is so operated, for the purpose of lowering the general average.

"SEC. 6. That the board of transportation is hereby empowered and directed to reduce the rates on any class or commodity in the schedule of rates fixed in this act, whenever it shall seem just and reasonable to a majority of said board so to reduce any rate; and said board of transportation is hereby empowered and directed to revise said classification of freight as hereinbefore in this act established, whenever it shall appear to a majority of said board just and reasonable to revise said classification. *Provided*, That said board of transportation shall never change the classification in this act established, so that by such change or classification the rates on any freight will become higher or greater than in this act fixed. When any reduction of rates or revision of classification shall be made by said board, it shall be the duty of said board to cause notice thereof to be published two successive weeks in some public newspaper, published in the city of Lincoln, in this State, which notice shall state the date of the taking effect of such change of rate or classification, and said change of rate or classification so made by the said board and published in said notice, shall take effect at the time so stated in said notice.

"SEC. 7. That articles not enumerated in said classification in section two (2) of this act established, not rated in said schedule of rates in section three (3) of this act, shall be classed with analogous articles in said classification, and

where there is any conflict between said classification and said schedule of maximum rates, said rates shall govern.

"SEC. 8. That in case any common carrier subject to the provisions of this act shall do, or cause to be done, or permit to be done any act, matter or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter or thing in this act required to be done, such common carrier shall be liable to the person or persons injured thereby, for all damages sustained in consequence of any such violation of the provisions of this act together with cost of suit and a reasonable counsel or attorney's fee, to be fixed by the court in which the same is heard on appeal or otherwise, which shall be taxed and collected as part of the costs in the case; *Provided*, That in all cases demand in writing on said common carrier shall be made for the money damages sustained before suit is brought for recovery under this section, and that no suit shall be brought until the expiration of fifteen days after such demand.

"SEC. 9. That in case any common carrier subject to the provisions of this act, shall do, or cause to be done, or permit to be done, any act, matter or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter or thing in this act required to be done, such common carrier shall upon conviction thereof, be fined in any sum not less than one thousand ($1,000.00) dollars, nor more than five thousand ($5,000.00) dollars for the first offense; and for the second offense not less than five thousand ($5,000) dollars, nor more than ten thousand ($10,000) dollars; and for the third offense, not less than ten thousand ($10,000) dollars, nor more than twenty thousand ($20,000) dollars; and for every subsequent offense and conviction thereof, shall be liable to a fine of twenty-five thousand ($25,000) dollars; *Provided*, That in all cases under this act either party shall have the right to trial by jury.

"SEC. 10. All acts and parts of acts inconsistent herewith are hereby repealed.

"Approved, April 12, A. D. 1893."

That under the provisions of said law appellants, composing the State board of transportation, with its secretaries, were required to enforce the provisions of said law.

Afterward Oliver Ames, Oakes Ames, Frank M. Ames,

William Powell Mason, E. Pierson Beebe, Charles J. Merrill, and Charles F. Choate, stockholders of the Union Pacific Railway Company, filed their bill in equity in the circuit court of the United States for the district of Nebraska against the defendants herein, to wit, said board of transportation and the officers composing the same, and also making defendants The Union Pacific Railway Company, The St. Joseph and Grand Island Railroad Company, The Omaha and Republican Valley Railroad Company, and The Kansas City and Omaha Railroad Company, in which it is averred, among other things, that the said act of the legislature was unconstitutional and void, and that the rates therein established were unreasonable, unjust, and confiscatory.

That said act denies to said companies and their stockholders the equal protection of the laws, and deprives them of their property without due process of law, and is repugnant to the Constitution of the United States.

That said act is also repugnant to the Constitution of the United States, in that it interferes with and is an attempt to regulate rates upon interstate commerce, and for which reason it is null and void and repugnant to the Constitution of the United States.

That upon the filing of said bill a temporary injunction was granted enjoining the appellants and the defendant railway companies from complying with or enforcing the provisions of said law.

That afterwards answers were filed by the State board of transportation and proofs were taken; whereupon the case was submitted upon the pleadings and the proofs to the circuit court of the United States for the district of Nebraska, Hon. David J. Brewer and Hon. Elmer S. Dundy presiding, and on the 23d day of November, 1894, a decree was entered which, among other things, enjoined the railway companies from making or publishing a schedule of rates in conformity to the law for the transportation of freight over their respective lines of road in the State of Nebraska.

And enjoining the defendant railway companies from in anywise obeying, observing, or conforming to the provisions, commands, injunctions, and prohibitions of said act.

And enjoining the board of transportation of the State of Nebraska and the members and secretaries of said board from entertaining, hearing, or determining any complaint against said railway companies, and from instituting or prosecuting or causing to be instituted or prosecuted any action or proceeding, civil or criminal, against either of said companies for any act done, suffered, or omitted which may be forbidden or commanded by said act, and particularly from reducing the rates of charges for the transportation of freight to the rates prescribed by said act.

And that the attorney general of the State of Nebraska be in like manner enjoined from bringing or causing to be brought any injunction, mandamus, or civil action against said companies for or on account of any omission on their part commanded or forbidden by the said act.

In said decree it is further provided:

"And it is further declared, adjudged, and decreed that the act above entitled is repugnant to the Constitution of the United States, forasmuch as by the provisions of said act the said defendant railroad companies may not exact for the transportation of freight from one point to another within this State charges which yield to the said companies or either of them reasonable compensation for such services."

These appellants further represent that the mileage of the defendant railway companies within the limits of the State of Nebraska is about one thousand miles, and that the reduction on existing local rates for the transportation of freight under the act in question would be about 29½ per cent., which, if enforced, would produce a saving to the people of the State of Nebraska engaged in the transportation of local freight upon said railway mileage and to the producers and consumers of such articles large sums of money, aggregating about $550,000, and upon the entire mileage of

all the lines of railway within the State of Nebraska of about $2,250,000 annually, and by reason whereof the State of Nebraska and the inhabitants thereof are greatly interested in the enforcement of the provisions of said law and are anxious for a speedy and final adjudication of the questions involved in the litigation.

The appellants further represent that they believe and are advised by their counsel that the said act of the legislature of the State of Nebraska is valid, and that the rates therein fixed are reasonable, and that said act is not in anywise in conflict with the Constitution of the United States, and that the appellants and the State of Nebraska ought to be at liberty to enforce the provisions of said law, and to that end move the Court for the advancement of this cause and a speedy adjudication thereof, to the end that the provisions of said law may be enforced, and, further, that if it be finally adjudged that said law is null and void, that the legislature of the State of Nebraska may at an early date re-enact such a law as shall not be subject to such objections, if any there be, to the present existing statute law of the State.

JNO. L. WEBSTER,
A. S. CHURCHILL,
Solicitors for Appellants.

UNITED STATES OF AMERICA, }
District of Nebraska, } ss:

Arthur S. Churchill, being first duly sworn, deposes and says that he is the attorney general of the State of Nebraska and one of the appellants, and that the matters set forth in the foregoing motion are true, as he verily believes.

A. S. CHURCHILL.

Subscribed in my presence and sworn to before me this 18th day of November, A. D. 1895.

[NOTARIAL SEAL.]

HORACE C. BURR,
Notary Public.

[Endorsed:] In the Supreme Court of the United States. Arthur S. Churchill, attorney general, *et al.*, appellants, *vs.* The Union Pacific Railway Company *et al.*, appellees. Motion to advance cause for argument. Jno. L. Webster, A. S. Churchill, sols. for appellants.

I shall not oppose this motion, but if the Court orders the cause advanced I hope it will not be to a day before the February recess.

J. M. WOOLWORTH,
Solicitor for Appellees.

IN THE SUPREME COURT OF THE UNITED STATES.

ARTHUR S. CHURCHILL, *Attorney General;* JOEL A. PIPER, *Secretary of State;* EUGENE MOORE, *Auditor of Public Accounts;* JOSEPH S. BARTLEY, *State Treasurer*, and HENRY C. RUSSELL, *Commissioner of Public Lands and Buildings, Officers of the State of Nebraska, Composing the State Board of Transportation*, and WILLIAM A. DILWORTH, J. M. KOUNTZ, and J. W. JOHNSON, *Secretaries of said Board, Appellants,*

vs.

OLIVER AMES, OAKES AMES, FRANK M. AMES, WILLIAM POWELL MASON, E. PIERSON BEEBE, CHARLES J. MERRILL, CHARLES F. CHOATE, UNION PACIFIC RAILWAY COMPANY, THE ST. JOSEPH AND GRAND ISLAND RAILROAD COMPANY, THE OMAHA AND REPUBLICAN VALLEY RAILROAD COMPANY, and THE KANSAS CITY AND OMAHA RAILROAD COMPANY, *Appellees.*

You are hereby notified that the appellants will, on the 9th day of December, 1895, appear in the Supreme Court of the United States and move for the advancement of the above-entitled cause, and have the Court set the same down

for hearing at an early date during the present term of said Court.

JNO. L. WEBSTER,
A. S. CHURCHILL,
Solicitors for Appellants.

[Endorsed:] In the Supreme Court of the United States. Arthur S. Churchill, attorney general, *et al.*, appellants, *vs.* The Union Pacific Railway Company *et al.*, appellees. Notice of motion to advance cause for argument.

Due personal service of the within notice. I consent that the motion be submitted to the court at any day prior to that mentioned in the notice.

J. M. WOOLWORTH,
Solicitor for Appellees.

[Endorsed:] Case No. 15,975. Supreme Court U. S., October term, 1895. Term No., 685. Arthur S. Churchill, att'y gen'l, &c., *et al.*, app'ts, *vs.* Oliver Ames *et al.* Motion to advance and acceptance of service. Filed November 23, 1895.

No. 686. Motion Papers for Appellant
FILED
NOV 23 1895
CLERK
Filed Nov. 23, 1895.

Supreme Court of the United States.

OCTOBER TERM, 1895.

No. 686.

A. S. CHURCHILL, ATTORNEY GENERAL, ET AL., CONSTITUTING THE BOARD OF TRANSPORTATION OF NEBRASKA, ET AL., APPELLANTS,

vs.

GEORGE SMITH ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

MOTION TO ADVANCE.

JOHN L. WEBSTER,
A. S. CHURCHILL,
Solicitors for Appellants.

(15,976.)

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1895.

No. 686.

ARTHUR S. CHURCHILL, *Attorney General;* JOEL A. PIPER, *Secretary of State;* EUGENE MOORE, *Auditor of Public Accounts;* JOSEPH S. BARTLEY, *State Treasurer,* and HENRY C. RUSSELL, *Commissioner of Public Lands and Buildings, Officers of the State of Nebraska, Composing the State Board of Transportation,* and WILLIAM A. DILWORTH, J. M. KOUNTZ, and J. W. JOHNSON, *Secretaries of said Board, Appellants,*

vs.

GEORGE SMITH, CHARLES P. GOODRICH, LAWRENCE MINOT, THOMAS J. CUSHING, T. LATHROP THORNDYKE, CHARLES P. GARDNER, and HENRY LEE, HENRY L. HIGGINSON, GEORGE C. LEE, CHARLES FAIRCHILD, JAMES JACKSON, and GARDNER M. LANE, *Copartners, Doing Business under the Firm Name of Lee, Higginson & Company;* HENRY A. COBB, ARTHUR ESTABROOK, CHARLES H. WATSON, CHARLES F. EDDY, ARTHUR SWEETSER, and FRANK L. BEEMIS, *Partners, Doing Business under the Firm Name of Brewster, Cobb & Estabrook;* JOHN PARKINSON, A. TUCKER BURR, JOSEPH M. GOODALE, and WINTHROP M. BURR, *Partners, Doing Business under the Firm Name of Parkinson & Burr,* and BENJAMIN R. WELD and FRANCIS M. WELD, *Executors of the Last Will and Testament of F. M. Weld, Deceased;* THE CHICAGO & NORTHWESTERN RAILROAD COMPANY, FREMONT, ELKHORN & MISSOURI VALLEY RAILROAD COMPANY, and THE CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY, *Appellees.*

The appellants, Arthur S. Churchill, attorney general; Joel A. Piper, secretary of state; Eugene Moore, auditor of public accounts; Joseph S. Bartley, state treasurer, and Henry C. Russell, commissioner of public lands and buildings, officers of the State of Nebraska, composing the State board of transportation, and William A. Dilworth, J. M. Kountz, and J. W. Johnson, secretaries of said board, move the Court to advance this cause and set the same down for argument at as early a date as may be convenient to the Court.

In support of the motion to advance, the appellants respectfully represent that the legislature of the State of Nebraska passed a law, which was approved April 12, A. D. 1893, and frequently designated in the record as house roll No. 33, the material parts of which are as follows:

"AN ACT to regulate railroads, to classify freights, to fix reasonable maximum rates to be charged for the transportation of freights upon each of the railroads in the State of Nebraska, and to provide penalties for the violation of this act.

"*Be it enacted by the Legislature of the State of Nebraska:*

"SEC. 1. The provisions of this act shall apply, except as in this act otherwise provided, to all railroad corporations and railroad companies, and to any common carrier or carriers engaged in this State in the transportation of freight by railroad therein, and shall also be held to apply to shipments of property made from any point within the State to any other point within the State. The term 'railroad,' as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation, receiver, trustee, or other person operating a railroad, whether owned or operated under contract, agreement, lease, or otherwise, and the term 'transportation' shall include all instrumentalities of shipment or carriage, and the term 'railroad corporation,' contained in this act shall be deemed and taken to mean all corporations, companies, or individuals now owning or operating, or which may hereafter own or operate any railroad, in whole or in part, in this State, and the provisions of this act, except as in this act otherwise provided, shall

apply to all persons, firms, and companies, and to all associations of persons, whether incorporated or otherwise, that shall do business as common carriers of freight upon any of the lines of railway in this State, the same as to railroad corporations herein mentioned.

"SEC. 2. That all freight or property to be transported by any railroad company or companies mentioned in the preceding section, from any point in the State of Nebraska to any other point in said State, shall be classified as hereinafter in this section provided, and any other or different classification of freight, which would raise the rates on class or commodity of freights above the rates prescribed in this act, except as hereinafter otherwise provided, is prohibited and declared to be unlawful. The classification established by this act shall be known as the 'Nebraska classification.' Freights shall be billed at the actual weight, unless otherwise directed in the classification. Twenty thousand pounds shall be a car-load and all excessive weights shall be at the same rate per hundred pounds, except in car-loads of light and bulky articles, and unless otherwise specified in this classification. When the classification makes an article 'released' or 'owner's risk' the same at carrier's risk will be the next rate higher, unless otherwise provided in the classification. Articles rated first class, 'released' or 'owner's risk,' if taken at 'carrier's risk,' will be one and one-half times first class, unless otherwise provided in the classification. All articles carried according to this classification at 'owner's risk' of fire, leakage, damage, or breakage, must be so receipted for by agents, of the railroad, and so considered by owners and shippers. Signing a release contract by a shipper shall not release the railroad company for loss or damages caused by carelessness or negligence of its employés."

The Nebraska Classification. Explanation of Characters.

"The class is given opposite each article. 1, 2, 3, 4, and 5 stand for first, second, third, fourth, and fifth classes respectively; 1½ for one and one-half first class; D. 1 for double first class; 2½ for two and one-half times first class; 3 t. 1 for three times first class; 4 t. 1 for four times first class; O. R. for owner's risk; C. R. for carrier's risk; S. U. for set up; K. D. for knocked down; C. L. for car-load; L. C. L.

for less than car-load; P. P. for prepaid; N. O. S. for not otherwise specified in this classification. Classes A, B, C, D, and E refer to table of rates.

"The figures or letter in the first column to the right of the various articles in the classification refer to less than car-load lots, and those in the second column refer to the rate in car-load lots."

(Then follows detailed list of articles under each classification in car-loads and less than car-loads.)

"SEC. 3. That each of the railroads in the State of Nebraska shall charge, for the transportation of freight from any point in said State to any other point in said State, no higher or greater rate of charge, than is by this act fixed as the reasonable maximum rate for the distance hauled, and the reasonable maximum rates for the transportation of freight by railroad from any point in the State of Nebraska to any other point in said State, are declared and established to be as hereinafter in this section fixed for the distance named and any higher or greater rate for the distance hauled than that herein fixed and established, is prohibited and declared to be unlawful; and the reasonable maximum rate herein fixed and established shall be known as the Nebraska schedule of reasonable maximum rates."

(Then follows a tabulated statement of classification and maximum rates.)

"SEC. 4. All railroads or parts thereof which have been built in this State since the 1st day of January, 1889, or may be built before the 31st day of December, 1899, shall be exempt from the provisions of this act until the 31st day of December, 1899.

"SEC. 5. Whenever any railroad company or companies in this State shall, in a proper action show by competent testimony that the schedule of rates prescribed by this act are unjust and unreasonable such railroad or railroads shall be exempt therefrom as hereinafter provided. All such actions shall be brought before the supreme court, in the name of the railroad company or companies bringing the same, and against the State of Nebraska, and upon the hearing thereof, if the court shall become satisfied that the

rates herein prescribed are unjust in so far as they relate to the railroad bringing the action, may issue their order directing the board of transportation to permit such railroad to raise its rates to any sum in the discretion of the board; *Provided*, That in no case shall the rates so raised be fixed at a higher sum than that charged by such railroad on the 1st day of January, 1893. Whenever any railroad company in this State shall claim the benefit of the provisions of this section, it shall be the duty of such railroad company to show to the court all matters pertaining to the management thereof, and if it shall appear that said railroad company is operating branch lines of railroad in connection with its main line, and all included in one system, then, in that case, it shall be the duty of the railroad company to show to the court upon which branch or branches, or upon which portion of such system the schedule of rates prescribed in this act is unjust and unreasonable, and only such portions shall be exempted from the provisions thereof; *Provided*, That in no case shall a railroad company be allowed to pool the earnings of all the lines operated under one management, where more than one line is so operated, for the purpose of lowering the general average.

"SEC. 6. That the board of transportation is hereby empowered and directed to reduce the rates on any class or commodity in the schedule of rates fixed in this act, whenever it shall seem just and reasonable to a majority of said board so to reduce any rate; and said board of transportation is hereby empowered and directed to revise said classification of freight as hereinbefore in this act established, whenever it shall appear to a majority of said board just and reasonable to revise said classification. *Provided*, That said board of transportation shall never change the classification in this act established, so that by such change or classification the rates on any freight will become higher or greater than in this act fixed. When any reduction of rates or revision of classification shall be made by said board, it shall be the duty of said board to cause notice thereof to be published two successive weeks in some public newspaper, published in the city of Lincoln, in this State, which notice shall state the date of the taking effect of such change of rate or classification, and said change of rate or classification so made by the said board and published in said notice, shall take effect at the time so stated in said notice.

"SEC. 7. That articles not enumerated in said classification in section two (2) of this act established, not rated in said schedule of rates in section three (3) of this act, shall be classed with analogous articles in said classification, and where there is any conflict between said classification and said schedule of maximum rates, said rates shall govern.

"SEC. 8. That in case any common carrier subject to the provisions of this act shall do, or cause to be done, or permit to be done any act, matter or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter or thing in this act required to be done, such common carrier shall be liable to the person or persons injured thereby, for all damages sustained in consequence of any such violation of the provisions of this act together with cost of suit and a reasonable counsel or attorney's fee, to be fixed by the court in which the same is heard on appeal or otherwise, which shall be taxed and collected as part of the costs in the case; *Provided*, That in all cases demand in writing on said common carrier shall be made for the money damages sustained before suit is brought for recovery under this section, and that no suit shall be brought until the expiration of fifteen days after such demand.

"SEC. 9. That in case any common carrier subject to the provisions of this act, shall do, or cause to be done, or permit to be done, any act, matter or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter or thing in this act required to be done, such common carrier shall upon conviction thereof, be fined in any sum not less than one thousand ($1,000.00) dollars, nor more than five thousand ($5,000.00) dollars for the first offense; and for the second offense not less than five thousand ($5,000) dollars, nor more than ten thousand ($10,000) dollars; and for the third offense, not less than ten thousand ($10,000) dollars, nor more than twenty thousand ($20,000) dollars; and for every subsequent offense and conviction thereof, shall be liable to a fine of twenty-five thousand ($25,000) dollars; *Provided*, That in all cases under this act either party shall have the right to trial by jury.

"SEC. 10. All acts and parts of acts inconsistent herewith are hereby repealed.

"Approved, April 12, A. D. 1893."

That under the provisions of said law appellants, composing the State board of transportation, with its secretaries, were required to enforce the provisions of said law.

Afterward George Smith, Charles P. Goodrich, Lawrence Minot, Thomas J. Cushing, T. Lathrop Thorndyke, Charles P. Gardner, and Henry Lee, Henry L. Higginson, George C. Lee, Charles Fairchild, James Jackson, and Gardner M. Lane, copartners, doing business under the firm name of Lee, Higginson & Company; Henry A. Cobb, Arthur Estabrook, Charles H. Watson, Charles F. Eddy, Arthur Sweetser, and Frank L. Beemis, partners, doing business under the firm name of Brewster, Cobb & Estabrook; John Parkinson, A. Tucker Burr, Joseph M. Goodale, and Winthrop M. Burr, partners, doing business under the firm name of Parkinson & Burr, and Benjamin R. Weld and Francis M. Weld, executors of the last will and testament of F. M. Weld, deceased, stockholders of the Chicago and Northwestern Railroad Company, filed their bill in equity in the circuit court of the United States for the district of Nebraska against the defendants herein, to wit, said board of transportation and the officers composing the same, and also making defendant The Chicago and Northwestern Railroad Company, in which it is averred, among other things, that the said act of the legislature was unconstitutional and void, and that the rates therein established were unreasonable, unjust, and confiscatory.

That said act denies to said companies and their stockholders the equal protection of the laws, and deprives them of their property without due process of law, and is repugnant to the Constitution of the United States.

That said act is also repugnant to the Constitution of the United States, in that it interferes with and is an attempt to regulate rates upon interstate commerce, and for which reason it is null and void and repugnant to the Constitution of the United States.

That upon the filing of said bill a temporary injunction

was granted enjoining the appellants and the defendant railway companies from complying with or enforcing the provisions of said law.

That afterwards answers were filed by the State board of transportation and proofs were taken; whereupon the case was submitted upon the pleadings and the proofs to the circuit court of the United States for the district of Nebraska, Hon. David J. Brewer and Hon. Elmer S. Dundy presiding, and on the 23d day of November, 1894, a decree was entered which, among other things, enjoined the railway companies from making or publishing a schedule of rates in conformity to the law for the transportation of freight over their respective lines of road in the State of Nebraska.

And enjoining the defendant railway companies from in anywise obeying, observing, or conforming to the provisions, commands, injunctions, and prohibitions of said act.

And enjoining the board of transportation of the State of Nebraska and the members and secretaries of said board from entertaining, hearing, or determining any complaint against said railway companies, and from instituting or prosecuting or causing to be instituted or prosecuted any action or proceeding, civil or criminal, against either of said companies for any act done, suffered, or omitted which may be forbidden or commanded by said act, and particularly from reducing the rates of charges for the transportation of freight to the rates prescribed by said act.

And that the attorney general of the State of Nebraska be in like manner enjoined from bringing or causing to be brought any injunction, mandamus, or civil action against said companies for or on account of any omission on their part commanded or forbidden by the said act.

In said decree it is further provided:

"And it is further declared, adjudged, and decreed that the act above entitled is repugnant to the Constitution of the United States, forasmuch as by the provisions of said act the said defendant railroad companies may not exact

for the transportation of freight from one point to another within this State charges which yield to the said companies or either of them reasonable compensation for such services."

These appellants further represent that the mileage of the defendant railway companies within the limits of the State of Nebraska is about one thousand miles, and that the reduction on existing local rates for the transportation of freight under the act in question would be about 29½ per cent., which, if enforced, would produce a saving to the people of the State of Nebraska engaged in the transportation of local freight upon said railway mileage and to the producers and consumers of such articles large sums of money, aggregating about $550,000, and upon the entire mileage of all the lines of railway within the State of Nebraska of about $2,250,000 annually, and by reason whereof the State of Nebraska and the inhabitants thereof are greatly interested in the enforcement of the provisions of said law and are anxious for a speedy and final adjudication of the questions involved in the litigation.

The appellants further represent that they believe and are advised by their counsel that the said act of the legislature of the State of Nebraska is valid, and that the rates therein fixed are reasonable, and that said act is not in anywise in conflict with the Constitution of the United States, and that the appellants and the State of Nebraska ought to be at liberty to enforce the provisions of said law, and to that end move the Court for the advancement of this cause and a speedy adjudication thereof, to the end that the provisions of said law may be enforced, and, further, that if it be finally adjudged that said law is null and void, that the legislature of the State of Nebraska may at an early date re-enact such a law as shall not be subject to such objections, if any there be, to the present existing statute law of the State.

——— ———.

UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

Arthur S. Churchill, being first duly sworn, deposes and says that he is the attorney general of the State of Nebraska and one of the appellants, and that the matters set forth in the foregoing motion are true, as he verily believes.

A. S. CHURCHILL.

Subscribed in my presence and sworn to before me this 18th day of November, A. D. 1895.

[NOTARIAL SEAL.] HORACE C. BURR,
Notary Public.

[Endorsed:] In the Supreme Court of the United States. Arthur S. Churchill, attorney general, *et al.*, appellants, *vs.* The Chicago and Northwestern Railroad Company *et al.*, appellees. Motion to advance cause for argument.

I shall not oppose this motion, but if the Court orders the cause advanced I hope it will not be to a day before the February recess.

J. M. WOOLWORTH.

IN THE SUPREME COURT OF THE UNITED STATES.

ARTHUR S. CHURCHILL, *Attorney General;* JOEL A. PIPER, *Secretary of State;* EUGENE MOORE, *Auditor of Public Accounts;* JOSEPH S. BARTLEY, *State Treasurer,* and HENRY C. RUSSELL, *Commissioner of Public Lands and Buildings, Officers of the State of Nebraska, Composing the State Board of Transportation,* and WILLIAM A. DILWORTH, J. M. KOUNTZ, and J. W. JOHNSON, *Secretaries of said Board, Appellants,*

vs.

GEORGE SMITH, CHARLES P. GOODRICH, LAWRENCE MINOT, THOMAS J. CUSHING, T. LATHROP THORNDYKE, CHARLES P. GARDNER, and HENRY LEE, HENRY L. HIGGINSON, GEORGE C. LEE, CHARLES FAIRCHILD, JAMES JACKSON, and GARDNER M. LANE, *Copartners, Doing Business under the Firm Name of Lee, Higginson & Company;* HENRY A. COBB, ARTHUR ESTABROOK, CHARLES H. WATSON, CHARLES F. EDDY, ARTHUR SWEETSER, and FRANK L. BEEMIS, *Partners, Doing Business under the Firm Name of Brewster, Cobb & Estabrook;* JOHN PARKINSON, A. TUCKER BURR, JOSEPH M. GOODALE, and WINTHROP M. BURR, *Partners, Doing Business under the Firm Name of Parkinson & Burr,* and BENJAMIN R. WELD and FRANCIS M. WELD, *Executors of the Last Will and Testament of F. M. Weld, Deceased;* THE CHICAGO & NORTHWESTERN RAILROAD COMPANY, THE FREMONT, ELKHORN & MISSOURI VALLEY RAILROAD COMPANY, and THE CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY, *Appellees.*

You are hereby notified that the appellants will, on the 9th day of December, 1895, appear in the Supreme Court of the United States and move for the advancement of the above-entitled cause, and have the Court set the same down

for hearing at an early date during the present term of said Court.

JNO. L. WEBSTER,
A. S. CHURCHILL,
Solicitors for Appellants.

[Endorsed:] In the Supreme Court of the United States. Arthur S. Churchill, attorney general, *et al.*, appellants, *vs.* The Chicago & Northwestern Railroad Company *et al.*, appellees. Notice of motion to advance cause for argument.

Due personal service of within notice admitted. I consent to the submission of the motion at any day before that mentioned in the notice.

J. M. WOOLWORTH,
Solicitor for Appellees.

[Endorsed:] Case No. 15,976. Supreme Court U. S., October term, 1895. Term No., 686. Arthur S. Churchill, att'y gen'l, &c., *et al.*, app'ts, *vs.* George Smith *et al.* Motion to advance and acceptance of service. Filed November 23, 1895.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1895.

No. 687.

ARTHUR S. CHURCHILL, *Attorney General;* JOEL A. PIPER, *Secretary of State;* EUGENE MOORE, *Auditor of Public Accounts;* JOSEPH S. BARTLEY, *State Treasurer,* and HENRY C. RUSSELL, *Commissioner of Public Lands and Buildings, Officers of the State of Nebraska, Composing the State Board of Transportation,* and WILLIAM A. DILWORTH, J. M. KOUNTZ, and J. W. JOHNSON, *Secretaries of said Board, Appellants,*

vs.

HENRY L. HIGGINSON, ROBERT H. GARDNER, WM. C. WELLS, GEO. A. GARDNER, W. S. DEXTER, CHARLES A. CUTTING, F. GORDON DEXTER, W. POWELL MASON, R. PIERSON BEEBE, S. E. PEABODY, and HENRY STOCTON, THE CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY, *Appellees.*

The appellants, Arthur S. Churchill, attorney general; Joel A. Piper, secretary of state; Eugene Moore, auditor of public accounts; Joseph S. Bartley, state treasurer, and Henry C. Russell, commissioner of public lands and buildings, officers of the State of Nebraska, composing the State board of transportation, and William A. Dilworth, J. M. Kountz, and J. W. Johnson, secretaries of said board, move

the Court to advance this cause and set the same down for argument at as early a date as may be convenient to the Court.

In support of the motion to advance, the appellants respectfully represent that the legislature of the State of Nebraska passed a law, which was approved April 12, A. D. 1893, and frequently designated in the record as house roll No. 33, the material parts of which are as follows:

"AN ACT to regulate railroads, to classify freights, to fix reasonable maximum rates to be charged for the transportation of freights upon each of the railroads in the State of Nebraska, and to provide penalties for the violation of this act.

"*Be it enacted by the Legislature of the State of Nebraska:*

"SEC. 1. The provisions of this act shall apply, except as in this act otherwise provided, to all railroad corporations and railroad companies, and to any common carrier or carriers engaged in this State in the transportation of freight by railroad therein, and shall also be held to apply to shipments of property made from any point within the State to any other point within the State. The term 'railroad,' as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation, receiver, trustee, or other person operating a railroad, whether owned or operated under contract, agreement, lease, or otherwise, and the term 'transportation' shall include all instrumentalities of shipment or carriage, and the term 'railroad corporation,' contained in this act shall be deemed and taken to mean all corporations, companies, or individuals now owning or operating, or which may hereafter own or operate any railroad, in whole or in part, in this State, and the provisions of this act, except as in this act otherwise provided, shall apply to all persons, firms, and companies, and to all associations of persons, whether incorporated or otherwise, that shall do business as common carriers of freight upon any of the lines of railway in this State, the same as to railroad corporations herein mentioned.

"SEC. 2. That all freight or property to be transported by any railroad company or companies mentioned in the preceding section, from any point in the State of Nebraska to

any other point in said State, shall be classified as hereinafter in this section provided, and any other or different classification of freight, which would raise the rates on class or commodity of freights above the rates prescribed in this act, except as hereinafter otherwise provided, is prohibited and declared to be unlawful. The classification established by this act shall be known as the 'Nebraska classification.' Freights shall be billed at the actual weight, unless otherwise directed in the classification. Twenty thousand pounds shall be a car-load and all excessive weights shall be at the same rate per hundred pounds, except in car-loads of light and bulky articles, and unless otherwise specified in this classification. When the classification makes an article 'released' or 'owner's risk' the same at carrier's risk will be the next rate higher, unless otherwise provided in the classification. Articles rated first class, 'released' or 'owner's risk,' if taken at 'carrier's risk,' will be one and one-half times first class, unless otherwise provided in the classification. All articles carried according to this classification at 'owner's risk' of fire, leakage, damage, or breakage, must be so receipted for by agents, of the railroad, and so considered by owners and shippers. Signing a release contract by a shipper shall not release the railroad company for loss or damages caused by carelessness or negligence of its employés."

The Nebraska Classification. Explanation of Characters.

"The class is given opposite each article. 1, 2, 3, 4, and 5 stand for first, second, third, fourth, and fifth classes respectively; 1½ for one and one-half first class; D. 1 for double first class; 2½ for two and one-half times first class; 3 t. 1 for three times first class; 4 t. 1 for four times first class; O. R. for owner's risk; C. R. for carrier's risk; S. U. for set up; K. D. for knocked down; C. L. for car-load; L. C. L. for less than car-load; P. P. for prepaid; N. O. S. for not otherwise specified in this classification. Classes A, B, C, D, and E refer to table of rates.

"The figures or letter in the first column to the right of the various articles in the classification refer to less than car-load lots, and those in the second column refer to the rate in car-load lots."

(Then follows detailed list of articles under each classification in car-loads and less than car-loads.)

"SEC. 3. That each of the railroads in the State of Nebraska shall charge, for the transportation of freight from any point in said State to any other point in said State, no higher or greater rate of charge, than is by this act fixed as the reasonable maximum rate for the distance hauled, and the reasonable maximum rates for the transportation of freight by railroad from any point in the State of Nebraska to any other point in said State, are declared and established to be as hereinafter in this section fixed for the distance named and any higher or greater rate for the distance hauled than that herein fixed and established, is prohibited and declared to be unlawful; and the reasonable maximum rate herein fixed and established shall be known as the Nebraska schedule of reasonable maximum rates."

(Then follows a tabulated statement of classification and maximum rates.)

"SEC. 4. All railroads or parts thereof which have been built in this State since the 1st day of January, 1889, or may be built before the 31st day of December, 1899, shall be exempt from the provisions of this act until the 31st day of December, 1899.

"SEC. 5. Whenever any railroad company or companies in this State shall, in a proper action show by competent testimony that the schedule of rates prescribed by this act are unjust and unreasonable such railroad or railroads shall be exempt therefrom as hereinafter provided. All such actions shall be brought before the supreme court, in the name of the railroad company or companies bringing the same, and against the State of Nebraska, and upon the hearing thereof, if the court shall become satisfied that the rates herein prescribed are unjust in so far as they relate to the railroad bringing the action, may issue their order directing the board of transportation to permit such railroad to raise its rates to any sum in the discretion of the board; *Provided*, That in no case shall the rates so raised be fixed at a higher sum than that charged by such railroad on the 1st day of January, 1893. Whenever any railroad company in this State shall claim the benefit of the provisions of this

section, it shall be the duty of such railroad company to show to the court all matters pertaining to the management thereof, and if it shall appear that said railroad company is operating branch lines of railroad in connection with its main line, and all included in one system, then, in that case, it shall be the duty of the railroad company to show to the court upon which branch or branches, or upon which portion of such system the schedule of rates prescribed in this act is unjust and unreasonable, and only such portions shall be exempted from the provisions thereof; *Provided*, That in no case shall a railroad company be allowed to pool the earnings of all the lines operated under one management, where more than one line is so operated, for the purpose of lowering the general average.

"SEC. 6. That the board of transportation is hereby empowered and directed to reduce the rates on any class or commodity in the schedule of rates fixed in this act, whenever it shall seem just and reasonable to a majority of said board so to reduce any rate; and said board of transportation is hereby empowered and directed to revise said classification of freight as hereinbefore in this act established, whenever it shall appear to a majority of said board just and reasonable to revise said classification. *Provided*, That said board of transportation shall never change the classification in this act established, so that by such change or classification the rates on any freight will become higher or greater than in this act fixed. When any reduction of rates or revision of classification shall be made by said board, it shall be the duty of said board to cause notice thereof to be published two successive weeks in some public newspaper, published in the city of Lincoln, in this State, which notice shall state the date of the taking effect of such change of rate or classification, and said change of rate or classification so made by the said board and published in said notice, shall take effect at the time so stated in said notice.

"SEC. 7. That articles not enumerated in said classification in section two (2) of this act established, not rated in said schedule of rates in section three (3) of this act, shall be classed with analogous articles in said classification, and where there is any conflict between said classification and said schedule of maximum rates, said rates shall govern.

"SEC. 8. That in case any common carrier subject to the provisions of this act shall do, or cause to be done, or per-

mit to be done any act, matter or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter or thing in this act required to be done, such common carrier shall be liable to the person or persons injured thereby, for all damages sustained in consequence of any such violation of the provisions of this act together with cost of suit and a reasonable counsel or attorney's fee, to be fixed by the court in which the same is heard on appeal or otherwise, which shall be taxed and collected as part of the costs in the case; *Provided*, That in all cases demand in writing on said common carrier shall be made for the money damages sustained before suit is brought for recovery under this section, and that no suit shall be brought until the expiration of fifteen days after such demand.

"SEC. 9. That in case any common carrier subject to the provisions of this act, shall do, or cause to be done, or permit to be done, any act, matter or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter or thing in this act required to be done, such common carrier shall upon conviction thereof, be fined in any sum not less than one thousand ($1,000.00) dollars, nor more than five thousand ($5,000.00) dollars for the first offense; and for the second offense not less than five thousand ($5,000) dollars, nor more than ten thousand ($10,000) dollars; and for the third offense, not less than ten thousand ($10,000) dollars, nor more than twenty thousand ($20,000) dollars; and for every subsequent offense and conviction thereof, shall be liable to a fine of twenty-five thousand ($25,000) dollars; *Provided*, That in all cases under this act either party shall have the right to trial by jury.

"SEC. 10. All acts and parts of acts inconsistent herewith are hereby repealed.

"Approved, April 12, A. D. 1893."

That under the provisions of said law appellants, composing the State board of transportation, with its secretaries, were required to enforce the provisions of said law.

Afterward Henry L. Higginson, Robert H. Gardner, Wm. C. Wells, Geo. A. Gardner, W. S. Dexter, Charles A. Cutting, F. Gordon Dexter, W. Powell Mason, E. Pierson Beebe, S. E. Peabody, and Henry Stocton, stockholders of the Chicago,

Burlington and Quincy Railroad Company, filed their bill in equity in the circuit court of the United States for the district of Nebraska against the defendants herein, to wit, said board of transportation and the officers composing the same, and also making defendants The Chicago, Burlington and Quincy Railroad Company, in which it is averred, among other things, that the said act of the legislature was unconstitutional and void, and that the rates therein established were unreasonable, unjust, and confiscatory.

That said act denies to said companies and their stockholders the equal protection of the laws, and deprives them of their property without due process of law, and is repugnant to the Constitution of the United States.

That said act is also repugnant to the Constitution of the United States, in that it interferes with and is an attempt to regulate rates upon interstate commerce, and for which reason it is null and void and repugnant to the Constitution of the United States.

That upon the filing of said bill a temporary injunction was granted enjoining the appellants and the defendant railway companies from complying with or enforcing the provisions of said law.

That afterwards answers were filed by the State board of transportation and proofs were taken; whereupon the case was submitted upon the pleadings and the proofs to the circuit court of the United States for the district of Nebraska, Hon. David J. Brewer and Hon. Elmer S. Dundy presiding, and on the 23d day of November, 1894, a decree was entered which, among other things, enjoined the railway companies from making or publishing a schedule of rates in conformity to the law for the transportation of freight over their respective lines of road in the State of Nebraska.

And enjoining the defendant railway companies from in anywise obeying, observing, or conforming to the provisions, commands, injunctions, and prohibitions of said act.

And enjoining the board of transportation of the State of

Nebraska and the members and secretaries of said board from entertaining, hearing, or determining any complaint against said railway companies, and from instituting or prosecuting or causing to be instituted or prosecuted any action or proceeding, civil or criminal, against either of said companies for any act done, suffered, or omitted which may be forbidden or commanded by said act, and particularly from reducing the rates of charges for the transportation of freight to the rates prescribed by said act.

And that the attorney general of the State of Nebraska be in like manner enjoined from bringing or causing to be brought any injunction, mandamus, or civil action against said companies for or on account of any omission on their part commanded or forbidden by the said act.

In said decree it is further provided:

"And it is further declared, adjudged, and decreed that the act above entitled is repugnant to the Constitution of the United States, forasmuch as by the provisions of said act the said defendant railroad companies may not exact for the transportation of freight from one point to another within this State charges which yield to the said companies or either of them reasonable compensation for such services."

These appellants further represent that the mileage of the defendant railway companies within the limits of the State of Nebraska is about one thousand miles, and that the reduction on existing local rates for the transportation of freight under the act in question would be about 29½ per cent., which, if enforced, would produce a saving to the people of the State of Nebraska engaged in the transportation of local freight upon said railway mileage and to the producers and consumers of such articles large sums of money, aggregating about $550,000, and upon the entire mileage of all the lines of railway within the State of Nebraska of about $2,250,000 annually, and by reason whereof the State of Nebraska and the inhabitants thereof are greatly interested in the enforcement of the provisions of said law and

are anxious for a speedy and final adjudication of the questions involved in the litigation.

The appellants further represent that they believe and are advised by their counsel that the said act of the legislature of the State of Nebraska is valid, and that the rates therein fixed are reasonable, and that said act is not in anywise in conflict with the Constitution of the United States, and that the appellants and the State of Nebraska ought to be at liberty to enforce the provisions of said law, and to that end move the Court for the advancement of this cause and a speedy adjudication thereof, to the end that the provisions of said law may be enforced, and, further, that if it be finally adjudged that said law is null and void, that the legislature of the State of Nebraska may at an early date re-enact such a law as shall not be subject to such objections, if any there be, to the present existing statute law of the State.

——.

UNITED STATES OF AMERICA, *District of Nebraska*, } ss:

Arthur S. Churchill, being first duly sworn, deposes and says that he is the attorney general of the State of Nebraska and one of the appellants, and that the matters set forth in the foregoing motion are true, as he verily believes.

A. S. CHURCHILL.

Subscribed in my presence and sworn to before me this 18th day of November, A. D. 1895.

[NOTARIAL SEAL.] HORACE C. BURR,
Notary Public.

[Endorsed:] In the Supreme Court of the United States. Arthur S. Churchill, attorney general, *et al.*, appellants, *vs.* The Chicago, Burlington and Quincy Railroad Company *et al.*, appellees. Motion to advance cause for argument. Jno. L. Webster, A. S. Churchill, sols. for appellants.

I shall not oppose this motion, but if the Court orders the cause advanced I hope it will not be to a day before the February recess.

J. M. WOOLWORTH,
Solicitor for Appellees.

IN THE SUPREME COURT OF THE UNITED STATES.

ARTHUR S. CHURCHILL, *Attorney General;* JOEL A. PIPER, *Secretary of State;* EUGENE MOORE, *Auditor of Public Accounts;* JOSEPH S. BARTLEY, *State Treasurer,* and HENRY C. RUSSELL, *Commissioner of Public Lands and Buildings, Officers of the State of Nebraska, Composing the State Board of Transportation,* and WILLIAM A. DILWORTH, J. M. KOUNTZ, and J. W. JOHNSON, *Secretaries of said Board, Appellants,*

vs.

HENRY L. HIGGINSON, ROBERT H. GARDNER, WM. C. WELLS, GEO. A. GARDNER, W. S. DEXTER, CHARLES A. CUTTING, F. GORDON DEXTER, W. POWELL MASON, R. PIERSON BEEBE, S. E. PEABODY, and HENRY STOCTON, THE CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY, *Appellees.*

You are hereby notified that the appellants will, on the 9th day of December, 1895, appear in the Supreme Court of the United States and move for the advancement of the above-entitled cause, and have the Court set the same down for hearing at an early date during the present term of said Court.

JNO. L. WEBSTER,
A. S. CHURCHILL,
Solicitors for Appellants.

[Endorsed:] In the Supreme Court of the United States. Arthur S. Churchill, attorney general, *et al.*, appellants, *vs.* The Chicago, Burlington and Quincy Railroad Company *et al.*, appellees. Notice of motion to advance cause for argument.

Due personal service of within notice admitted. I consent to the submission of the motion at any time prior to the day prior mentioned in the notice.

J. M. WOOLWORTH,
Solicitor for Appellees.

[Endorsed:] Case No. 15,977. Supreme Court U. S., October term, 1895. Term No., 687. Arthur S. Churchill, att'y gen'l, &c., *et al.*, app'ts, *vs.* Henry L. Higginson *et al.* Motion to advance and acceptance of service. Filed November 23, 1895.

Nos. 310, 311 and 312.

Motion Papers.

Filed Nov. 28, 1896.

NOV 28 1896

JAMES H. McKENNEY,

Supreme Court of the United States, October Term, 1896.

No. 310

ARTHUR S. CHURCHILL, Attorney General; Joel A. Piper, Secretary of State; Eugene Moore, Auditor of Public Accounts; Joseph S. Bartley, State Treasurer, and Henry C. Russell, Commissioner of Public Lands and Buildings, of the State of Nebraska, Consituting the Board of Transportation of the State of Nebraska, et al., Appellants,

vs.

OLIVER AMES, OAKES AMES, FRANK M. AMES, et al.

No. 311

ARTHUR S. CHURCHILL, ET AL., CONSTITUTING the Board of Transportation of the State of Nebraska, et al., Appellants,

vs.

GEORGE SMITH, CHARLES P. GOODRICH, LAWRENCE MINOT, et al.

No. 312

ARTHUR S. CHURCHILL, ET AL., CONSTITUTING the Board of Transportation of the State of Nebraska, et al., Appellants,

vs.

HENRY L. HIGGINSON, ROBERT H. GARDNER, William C. Wells, et al.

Notice of Motion of Appellants to have the above causes set down for hearing.

To JAMES M. WOOLWORTH, *Solicitor for Appellees:*

You are hereby notified that the appellants in the above entitled causes will, on the 30th day of November, 1896, apply to the Supreme Court of the United States at the opening of its sitting on said date, to have the above causes set down for reargument at such early date as the court may fix.

This application will be based upon the motion heretofore filed at the October Term, 1885, for the advancement of said causes, and upon the further fact that the said Court did make its order advancing said causes, and that said causes were argued during the said October, 1895, Term, and that said Court of its own motion directed that said causes be restored to the docket for reargument.

A. S. CHURCHILL,
Attorney General of Nebraska.

JNO. L. WEBSTER,
Solicitor for Appellants.

Service of above notice accepted this 19th day of November, 1896.

J. M. WOOLWORTH,
Solicitor for Appellees.

Nos. 310, 311 and 312.

Motion Papers.

Supreme Court, U. S.
NOV 28 1896
CLERK.

Filed Nov. 28, 1896.

Supreme Court of the United States, October Term, 1896.

No. 310

ARTHUR S. CHURCHILL, Attorney General; Joel A. Piper, Secretary of State; Eugene Moore, Auditor of Public Accounts; Joseph S. Bartley, State Treasurer, and Henry C. Russell, Commissioner of Public Lands and Buildings, of the State of Nebraska, Consituting the Board of Transportation of the State of Nebraska, et al., Appellants,

vs.

OLIVER AMES, OAKES AMES, FRANK M. AMES, et al.

No. 311

ARTHUR S. CHURCHILL, ET AL., CONSTITUTING the Board of Transportation of the State of Nebraska, et al., Appellants,

vs.

GEORGE SMITH, CHARLES P. GOODRICH, LAWRENCE MINOT, et al.

No. 312

ARTHUR S. CHURCHILL, ET AL., CONSTITUTING the Board of Transportation of the State of Nebraska, et al., Appellants,

vs.

HENRY L. HIGGINSON, ROBERT H. GARDNER, William C. Wells, et al.

Motion to have the above entitled causes set down for an early date for reargument.

Now come the appellants and move the Court for an order fixing an early date for the reargument of the above enlitled causes.

This motion is based upon the motion heretofore filed in this Court at the October Term, 1895, for the advancement of said causes, and to which reference is hereby made, and upon the further fact that this Court did make its order advancing

said causes, and by reason whereof said causes were argued at the bar of the Court during said October Term, 1895, and by reason of the further fact that this Court, after said argument directed that the said causes be restored to the docket for reargument.

The appellants desire that said reargument be fixed at as early a date as may be convenient to the Court.

A. S. CHURCHILL,
Attorney General of Nebraska.

JNO. L. WEBSTER,
Solicitor for Appellants.

Service of above notice accepted this 19th day of November, 1896.

J. M. WOOLWORTH,
Solicitor for Appellees.